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No. 81-2332

IN THE

Supreme Court of the United States

October Term, 1981

NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY, a political subdivision of the Commonwealth of Virginia,
Petitioner,

v.

THE CHESAPEAKE and POTOMAC TELEPHONE COMPANY OF VIRGINIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petition *Amicus Curiae* of the Corporation Counsel of the City of Albany, New York

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QUESTION PRESENTED.

Whether the Chesapeake and Potomac Telephone Company of Virginia, is a "displaced person" under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. §§4601 et seq. (Uniform Relocation Act) when it seeks reimbursement for the cost of removing its distribution facilities from public rights-of-way in the execution of an urban renewal project funded in part by grants from the Department of Housing and Urban Development.

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INTEREST OF THE AMICUS CURIAE

The City of Albany, New York respectfully submits this brief, pursuant to Rule 36 of the Rules of the Court.

The City of Albany is concerned about the rule, announced by the Court of Appeals for the Fourth Circuit, abrogating the Common Law rule by allowing utility companies to collect relocation benefits under the Uniform Relocation Act of 1970.

The City fears that if this new rule is applied in Albany, both past and future urban renewal projects, entered into by the City, could be substantially jeopardized.

SUMMARY OF ARGUMENT

The City of Albany, New York and the Albany Urban Renewal Agency, a municipal agency empowered under the laws of the State of New York to undertake urban renewal programs, have followed the well established Common Law rule that utility companies, with service lines within an urban renewal project area, are not generally entitled to benefits under either the Uniform Relocation Policies Act, 84 Stat. 1894, 42 U.S.C. §4601 et seq (hereinafter referred to as the Uniform Relocation Act), or any other state or local relocation entitlement program.

Twelve years after the passage of the Uniform Relocation Act, the Court of Appeals for the Fourth Circuit relied upon a Congressional Declaration to abrogate this Common Law in a post facto manner.

An application of this decision in New York State runs the risk of subjecting the City of Albany and the Albany Urban Renewal Agency to substantial and expected liability.

If the Common Law is to be so abrogated, then the Supreme Court should render such a decision giving due regard to the pragmatic issues exposed in the wake of this radical change.

REASONS FOR GRANTING WRIT

1. NEW YORK STATE FOLLOWS THE COMMON LAW RULE WHICH STATES THAT UTILITY COMPANIES CAN NOT CLAIM RELOCATION BENEFITS TO OFFSET EXPENDITURES NECESSARY TO BRING UTILITY LINES IN COMPLIANCE WITH URBAN RENEWAL PLANS ADOPTED BY A MUNICIPALITY.

New York State utility companies operate subject to the municipality's exercise of police power. New Rochelle Water Co. v State of New York, 10 N.Y.2d 287; 29 N.Y.S. 2d 1; 176 N.E.2d 705 (1961); New York City Tunnel Authority v Consolidated Edison Co., 295 N.Y. 467; 68 N.E.2d 445 (1946). The clearance of slums and urban renewal is an exercise of this police power. Berman v Parker, 348 U.S. 26 (1954); Matter of New York City Housing Authority v Muller, 270 N.Y. 333; 1 N.E.2d 153 (1936). Thus, "...public service corporations maintain their rights in the streets, subject to reasonable regulation and control, and are bound to relocate their

structures at their own expense whenever the public health, safety or convenience requires the change to be made." New York City Tunnel Authority, 295 N.Y. at 475.

The City of Albany, the Albany Urban Renewal Agency and the various concerned utility companies were convinced that the Uniform Relocation Act made no discernable change in this Common Law. Thus, in 1975 the City of Albany adopted, by resolution, the Albany Urban Renewal Agency South End Project No. 2 N.Y.R. 259.

In accordance with this plan and in reliance upon the Common Law stated above, the City of Albany ordered the various utilities within the project area to adjust their service lines. The City then addressed all reasonable relocation claims and has paid just compensation for the relocation of businesses and individuals who relocated out of the project area. At this late date, after many years of planning

and in reliance upon the Common Law stated above, the City of Albany has exhausted its funds earmarked for this project.

2. THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT HAS RELIED UPON A TENUOUS STATEMENT OF LEGISLATIVE POLICY TO ABRUPTLY OVERTURN THE WELL ESTABLISHED COMMON LAW.

As the Supreme Court noted in Alexander v United States Department of Housing and Urban Development, 441 U.S. 39 (1979), the "Declaration of Policy", S. 1, 91st Cong., 1st Sess. §201 (1969) prefacing the Uniform Relocation Assistance Act, states the purpose of that Act. This Declaration states that the purpose of the Uniform Relocation Act is

> ...to establish a uniform policy for the fair and equitable treatment of owners, tenants, and others displaced by the acquistion of real property in Federal and federally assisted programs to the end that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the

public as a whole. Alexander, 441 U.S. at 51.

The Court of Appeals for the Fourth Circuit, relying upon this "Declaration of Policy", claims that the Uniform Relocation Act is void of clear legislative intent to exclude utilities from claiming relocation benefits under the Act. Thus, the Court of Appeals states that Congress intended to create benefits for the utility companies under the Uniform Relocation Act. Therefore, according to the Court of Appeals, "reliance on the Common Law (at this time) is unconvincing."

It is this very "Declaration of Policy", which provides the legislative intent seemingly overlooked by the Court. A full reading of the quoted matter clearly demonstrates that Congress acted to insure that a "person shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as

a whole."

It is well established that utility companies can pass the costs of their adjustments in the project area along to utility users, therefore, the utility companies can hardly be termed victims suffering disproportionate injuries as a result of a project.

Absent the ability of the utility companies to show a bonifide injury and in light of the well-settled Common Law, known to Congress at the time of the passage of the Uniform Relocation Act, it is clear that Congress intended to exclude utilities from claiming benefits under the Act.

3. WHEN A MUNICIPALITY IS SUDDENLY EXPOSED TO MULTI-MILLION DOLLAR LIABILITY AS A RESULT OF A STATUTORY INTERPRETATION WHICH ABROGATES A WELL SETTLED COMMON LAW, THAT INTERPRETATION SHOULD BE MADE BY THIS COURT CONSIDERING THE SUBSTANTIAL ISSUES UNEARTHED BY SUCH A RADICAL CHANGE.

If the decision of the Court of Appeals

abrogating the Common Law was applied to the present situation in Albany, New York, as described above, the Albany Urban Renewal Agency engineers estimate that the cost of relocating utility lines in the Albany Urban Renewal Project No. 2 N.Y.R. 259 could approximate three million dollars.

The Court of Appeals for the Fourth Circuit has relied upon a Declaration of Policy, which has been shown to be subject to a substantially different interpretation, to abrogate a well established Common Law. The Court of Appeals failed to address such pragmatic issues as: 1) whether a utility has legally "relocated" when in fact, it never moves from a urban renewal project area or looses an interest in real property; and 2) where the municipality is to look for monies to satisfy its newly acquired liabilities in light of the fact that they have exhausted their federal entitlement for federal relocation benefits.

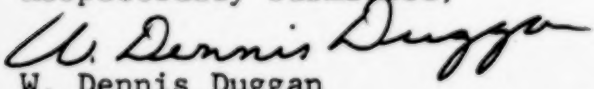
Therefore, the Supreme Court should review the decision of the Court of Appeals.

If in fact the Common Law is to be abrogated, at this late date and upon so tenuous an interpretation as that given by the Court of Appeals, then this Court is the proper forum for announcing such a change. This Court is the only forum which can properly consider the devastating nationwide impact such a decision would have; for the simple fact of the matter is, many cities such as Albany, New York, have no monies remaining in project coffers to fund what, at this time, would amount to a windfall profit to utility companies.

CONCLUSION

The United States Supreme Court should issue a Writ of Certiorari.

Respectfully submitted,



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